



457695



## INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We Protect Hoosiers and Our Environment.*

*Mitchell E. Daniels, Jr.*  
Governor

*Thomas W. Easterly*  
Commissioner

100 North Senate Avenue  
Indianapolis, Indiana 46204  
(317) 232-8603  
Toll Free (800) 451-6027  
[www.idem.IN.gov](http://www.idem.IN.gov)

August 7, 2012

Mr. Joseph B. Card  
CAVU Ops, Inc.  
P.O. Box 10159  
Terre Haute, IN 47801

Re: **Project Termination**  
Former Western Tar Site  
2525 Prairieton Road  
Terre Haute, Indiana  
VRP #6990902

Dear Mr. Card:

This letter will serve as the denial of your most recent request for an extension of time to submit an adequate Remedial Work Plan and notice of the voiding of Western Tar's Voluntary Remediation Agreement. On November 22, 1999 IDEM entered into a Voluntary Remediation Agreement (VRA) with Western Tar Products Corporation for the purpose of remediating the release of hazardous substances or petroleum at the above referenced facility. To date, no actual remediation has occurred, and in fact the extent of contamination migrating offsite towards adjacent properties and waters of the state remains undefined despite this site's 13-year tenure in the Voluntary Remediation Program (VRP). The VRA states that the Applicant shall submit a Remediation Work Plan (RWP) not later than 180 days after the effective date of the Agreement, or longer if an extension is agreed to by the parties. The VRA further states that if the Applicant fails to submit the RWP within that period, the VRA is voidable at the discretion of IDEM. Additionally, the VRA provides that any time periods specified in the Agreement may be extended only by agreement of the parties. Following 13 years of back and forth correspondence and dispute and negotiation regarding site investigation and proposed remedial approaches, and numerous submittal deadline extension request approvals by this agency, the most recent agreed upon submittal date for an RWP was August 1, 2012. The Applicant has again requested an extension of time. IDEM can no longer agree to any further extensions.

Specifically pertaining to correspondence limited to the past year in this regard:

- IDEM reiterated in e-mail correspondence dated August 11, 2011 that timely resolution of issues pertaining to the delineation of contamination that had migrated beyond the property boundaries, and a definitive response regarding a schedule to proceed and to submit an approvable RWP were necessary in order to continue participation in the VRP. In this e-mail correspondence IDEM expressed a desire to remain reasonable, however as advised numerous times over the lifetime of this project IDEM communicated that the continued management of this site in the voluntary program could not proceed under the historical pattern of progress towards site characterization and RWP development.
- In e-mail correspondence dated August 17, 2011 Keramida Environmental (Keramida) responded indicating that site characterization and contaminant delineation would be complete, and a revised RWP would be submitted for agency review by December 8, 2011. In subsequent e-mail correspondence IDEM approved this most recent extension request.
- In e-mail correspondence dated December 19, 2011 Keramida advised that additional delineation activities were necessary prior to submittal of the RWP, and that a schedule for this work would be submitted for agency consideration later that week.
- In e-mail correspondence dated February 17, 2012 Keramida indicated the desire to schedule a meeting to discuss investigation activities for offsite contamination. In subsequent e-mail


correspondence (dated February 21, 2012) IDEM agreed to this request provided that a specific schedule to complete the work could be proposed as requested, and more specifically stated

*If CAVU Ops can commit to a reasonably aggressive timeframe to complete the necessary work and submit a revised RWP, I can consider that. Otherwise, and I know I sound like a broken record here but we just can't continue like this in the VRP any longer with this sort of drawn-out, indefinite schedule. The schedule of additional work referenced below (from our last correspondence two months ago) is discussed within a one week timeframe. I honestly intend to be reasonable, but after so many years of not gaining any traction, (still) incomplete delineation, and a reluctance or inability to move forward in a reasonable timeframe, I'm put in a position where I just have to draw a line somewhere. I can't avoid that any longer, as I'm sure you understand. We honestly have other sites that require our time and resources, and I can't continue to commit time and resources to this site under the current pattern of activity. As referenced in this agency's December 30, 2008 correspondence, if an approvable RWP cannot be developed, we need to terminate this site's participation in the VRP.*

- A meeting to discuss this site was held on March 21, 2012 between IDEM, Keramida Environmental, and your legal counsel. During this meeting Keramida proposed June 20, 2012 as the new date to complete site characterization activities and the delineation of offsite contamination, and submit a RWP to IDEM. IDEM again approved of this most recent postponement of the RWP submittal date, and in fact set August 1, 2012 as the submittal date in an effort to provide even more flexibility in order to facilitate that site work could finally be completed and that a RWP could be submitted. This most recent date was memorialized in formal agency correspondence dated April 25, 2012. In this letter, IDEM stated "Following 13 years of participation in the VRP, if site characterization cannot be completed and an approvable RWP as discussed cannot be submitted to this agency by August 1, 2012, our firm intention is to terminate participation for this site in the VRP and transfer IDEM regulatory oversight to the State Cleanup Program." This sentiment was discussed during our March 21<sup>st</sup> meeting, and acknowledged during that meeting by both Keramida and your legal counsel.
- In e-mail correspondence dated July 30, 2012 Keramida advised that although the above sentiment from IDEM's April 25<sup>th</sup> letter was understood, due to ongoing external negotiations with insurance carriers the site characterization and offsite investigation had still not occurred, and as such the latest submittal deadline for the RWP would not be met yet again. Again, in subsequent e-mail correspondence IDEM asked for yet another specific proposed date to complete the work and submit the RWP as discussed. Keramida responded and proposed December 24, 2012 as the new date to complete site characterization and investigation of offsite contamination, and submit the RWP.

Despite our understanding of the general complications associated with the ongoing negotiations with insurance carriers, IDEM cannot reasonably approve this most recent extension request. In accordance with the VRA and this agency's prior correspondence, this letter provides notification that this VRP project is being terminated effective today. The VRP is a voluntary program without authority to enforce timeframes. The only recourse the VRP has is to void the agreement as provided for therein. The Accounting Department will conduct a final audit of your billing account. Any balances due or refunds due will be calculated in order to close out the project. As previously advised, agency oversight for this site is hereby being transferred to IDEM's State Cleanup Program. Subsequent formal correspondence from that program will follow.

Sincerely,

  
Corey Webb,  
Section Chief  
Voluntary Remediation Program  
Office of Land Quality